

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

January 14, 1998

UNITED STATES OF AMERICA)	
Complainant,)	
)	8 U.S.C. § 1324c Proceeding
v.)	
)	OCAHO Case No. 95C00153
FELIPE DE LEON-VALENZUELA)	
Respondent.)	

ORDER COMPELLING RESPONSES TO DISCOVERY REQUESTS

This case is set for hearing on March 29, 1998. On December 29, 1997, respondent filed a motion to compel responses to discovery together with a copy of his request for production of documents and the complainant's objections thereto. In response, the complainant filed an amended response to the request for production, providing some, but not all of the requested documents. It appears that requests 3, 4, 5, and 6 have complied with,¹ but that 1, 2, and 7 appear to have been complied with only in part. Accordingly this order addresses only requests 1, 2, and 7.

Respondent's request number 1 was that complainant produce and permit respondent to inspect and copy any and all documents relating to the adjudication of the Form I-485, the complainant regarding document fraud, and the Order to Show Cause of Felipe de Leon-Valenzuela.

Complainant's answer states:

The Service has already provided the I-9 and documents used for the Complaint regarding document fraud. The Service now includes the Report of Investigation. The Service will not produce documents relating to the adjudication of the Form I-485 or the Order to Show Cause. Any documents regarding the I-485 and the Order to Show Cause are irrelevant to the subject matter involved in this civil

¹ No justification is offered for the failure to produce these documents earlier. I note for the benefit of the parties that a general unspecified blanket objection on the grounds of attorney-client privilege and work product is grossly insufficient and improper. A claim of privilege requires particularized information so that the validity of the objection can be reasonably assessed. Ironworkers Local 455 v. Lake Constr. and Dev. Corp., 6 OCAHO 911, at 7 (1997). The work product doctrine does not protect facts concerning either the creation of the work product or the facts contained within the work product.

document fraud case. See F.R.C.P. 26(b)(1). The respondent has not shown how documents relating to the adjudication of the Form-I-485 and the Order to Show Cause are relevant to a civil document fraud proceeding.

The scope of relevancy in discovery is broader than the scope of discovery at hearing because it cannot necessarily be determined in advance what information is in the document requested or what other information it might lead to. It is not self-evident, for example, that the documents related to the adjudication of respondent's Form I-485 or Order to Show Cause may not lead to the discovery of other admissible evidence; complainant is reasonably entitled to all the information about him in the hands of the INS and the documents should be produced within 10 days.

Respondent's request number 2 was that complainant produce and permit respondent to inspect and copy all I-9 forms from 1986 until present for all employees of Texas Arai, Inc., which were inspected and reviewed by Immigration and Naturalization Service agents.

Complainant's Answer states:

Attached are the I-9's which, after Service review, were found to have been completed with counterfeit documents. Total is seventy-three (73).

The Service provides no explanation or excuse for the failure to produce the remainder of I-9 forms which were not found to have been completed with counterfeit documents. Absent justification, complainant is instructed to produce them within 10 days.

Respondent's request number 7 was that complainant produce and permit respondent to inspect and copy any and all reports, documents, notes or any other items which complainant intends to offer into evidence at the trial of this action.

Complainant's Answer states:

See Complainant's Exhibit List, Witness List, and Pretrial Brief mailed to respondent's attorney on March 6, 1997.

Providing a list of documents is not the same as providing the documents themselves. Both parties are hereby advised that if there is any document appearing on either party's exhibit list which has not been produced to the opposing party for examination and copying, the document is to be so produced within the next ten days. Any document not so disclosed may be subject to

a motion in limine at the hearing. Complainant will accordingly produce to respondent within 10

days all documents it intends to offer in evidence. Respondent is instructed to do the same.

SO ORDERED.

Dated and entered this 14th day of January, 1998.

Ellen K. Thomas
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of January, 1998, I have served copies of the foregoing Order Compelling Responses to Discovery Requests on the following persons at the addresses indicated:

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